

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

EVERLINE WILLIAMS,
Plaintiff,

v.

REDWOOD TOXICOLOGY
LABORATORY,
Defendant.

Case No. 4:21-cv-04501-HSG (LB)

DISCOVERY ORDER

Re: ECF Nos. 79, 81, 83, 84

INTRODUCTION AND STATEMENT

The parties in this employment discrimination case dispute whether the plaintiff must provide medical records, including records related to the plaintiff's physical and mental condition.¹ The defendant asks the court to compel the plaintiff to (1) produce medical records from medical providers who the plaintiff identified in discovery (including records related to the treatment of emotional distress), (2) execute authorizations so that the defendant can subpoena the records directly from the plaintiff's medical providers, and (3) submit to an independent medical examination (IME) on mental or psychiatric health issues under Rule 35 of the Federal Rules of

¹ Disc. Letter – ECF No. 79. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

Civil Procedure.² The defendant also asks for an extension of (1) the June 29, 2022 fact discovery cutoff to complete the plaintiff's deposition after her medical records are produced and (2) the August 12, 2022 deadline, as to the defendant only, to disclose an expert on the plaintiff's alleged emotional injuries.³

The parties' discovery letter did not initially include a statement from the plaintiff.⁴ Instead, the plaintiff filed a "Motion to Exclude Psychiatric and Workman Compensation Record, Motion for Protective Order."⁵ The plaintiff later filed a version of the letter with her position.⁶ The plaintiff contends that she has not asserted a claim for a "mental or psychiatric injury" and that the defendant should not be allowed to depose her on those issues or obtain her mental health records.⁷ The plaintiff also asks for a protective order barring the defendant from obtaining or deposing her on her "Workman Compensation record."⁸

The court can decide the motion for reconsideration without oral argument. N.D. Cal. Civ. L.R. 7-1(b). The court denies the defendant's request to compel the plaintiff to submit to an independent mental or psychiatric examination or produce mental health records because the operative complaint does not allege more than garden variety emotional distress. The plaintiff cannot, however, rely on psychotherapist-patient communications or submit expert testimony in support of any claim for emotional-distress damages without waiving the protection over her mental health records.

Regarding the other issues, the plaintiff must produce and sign authorizations for medical records related to physical conditions and injuries referenced in the complaint. There is no basis to prohibit the defendant from obtaining or questioning the plaintiff on her workers' compensation

² *Id.* at 1–2. (The discovery letter references an "Independent Mental Examination," but the term IME usually is a general reference to an independent medical examination.)

³ *Id.* at 4.

⁴ *Id.*

⁵ Mot. – ECF No. 81; Am. Mot. – ECF No. 83.

⁶ Disc. Letter – ECF No. 84.

⁷ Mot. – ECF No. 81 at 2–3.

⁸ *Id.* at 3–4; ECF No. 83 at 4.

record in this employment case. Concerning deadlines, any request to extend the discovery deadlines must be addressed to the trial court.

LEGAL STANDARDS

As always, the court must first determine whether the information sought is relevant. *See* Fed. R. Civ. P. 26(b) (subject to the limitations imposed by Rule 26(b)(2)(C), “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case”). Assuming the material is relevant, the court must next determine whether the information sought is protected by the psychotherapist-patient privilege.

Where evidence is relevant to state and federal claims, the federal law of privilege applies. *See Fitzgerald v. Cassil*, 216 F.R.D. 632, 635 (N.D. Cal. 2003); *Perrignon v. Bergen Brunswig. Corp.*, 77 F.R.D. 455, 459 (N.D. Cal. 1978). Under the federal psychotherapist-patient privilege, “confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence.” *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996) (cleaned up). “Like other testimonial privileges, the patient of course may waive the protection.” *Id.* at 15 n.14.

Individuals also have privacy rights over medical records in general. *Bangoura v. Andre-Boudin Bakeries*, No. C 12-3229 MMC (DMR), 2012 WL 5349991, at *2 (N.D. Cal. Oct. 29, 2012). A party may also waive these privacy rights by putting their medical condition at issue in a case. *Id.*

Under *Jaffee*, there is no waiver of the psychotherapist-patient privilege where the plaintiff does not rely on psychotherapist-patient communications to prove damages and no expert testimony will be submitted in support of the claim for emotional distress. *EEOC v. Peters’ Bakery*, 301 F.R.D. 482, 487 (N.D. Cal. 2014). This is true even if the plaintiff has asserted a claim for emotional-distress damages. *Id.* (holding that the plaintiff did not waive the psychotherapist-patient privilege where the “only claim asserted is for emotional distress damages” and the plaintiff had “not asserted a claim for intentional infliction of emotional distress or any such claim for unusual or special damages”).

The rule is similar for purposes of Rule 35. Courts in this district have repeatedly held that where a plaintiff claims “garden variety” emotional distress, the plaintiff’s psychological condition

is not “in controversy” for purposes of Rule 35. *Everett Pringle v. Andrew Wheeler, et al.*, No. 19-cv-07432-WHO, 2021 WL 1907824, at *1 (N.D. Cal. Apr. 16, 2021) (“[The plaintiff’s] claims for ‘mental and emotional distress,’ ‘pain and suffering,’ and ‘stress, internal turmoil, trauma, and anxiety’ are ‘garden variety’ emotion[al] distresses that do not put his mental condition in controversy.”); *Tan v. City & Cnty. of San Francisco*, No. C 08-01564 MEJ, 2009 WL 594238, at *1 (N.D. Cal. Mar. 4, 2009) (garden variety emotional distress alone is not sufficient to place a party’s mental state in controversy).

ANALYSIS

The plaintiff’s original complaint alleged claims for employment discrimination under California’s Fair Employment and Housing Act (FEHA) and Title VII of the Civil Rights Act.⁹ The plaintiff also asserted breach of contract, unfair competition, and invasion-of-privacy claims.¹⁰ The court dismissed the plaintiff’s breach of contract, unfair competition, and privacy claims.¹¹ The plaintiff’s First Amended Complaint includes FEHA, Title VII, breach of contract, and unfair competition claims.¹² There is a pending motion to strike portions of the plaintiff’s First Amended Complaint. It challenges the breach of contract and unfair competition claims, but not the Title VII claims.¹³

The plaintiff has asserted state and federal claims and the material sought appears to be relevant to both claims. Thus, federal law of privilege applies not — as the defendant contends in the discovery letter — California law.¹⁴ *Fitzgerald*, 216 F.R.D. at 635. Although the defendant cited an order by the undersigned issued in *Smith v. Equinox Holdings, Inc.*, that applied California privilege law in an employment case, that case did not include federal claims and was

⁹ Compl. – ECF No. 1 at 7–12 (¶¶ 50–99).

¹⁰ *Id.* at 12–15 (¶¶ 101–129).

¹¹ Order – ECF No. 33 at 9.

¹² First Am. Compl. – ECF No. 37 at 7–12 (¶¶ 50–99).

¹³ Mot. – ECF No. 42 at 2–3.

¹⁴ Disc. Letter – ECF No. 79 at 3.

1 removed based on diversity jurisdiction only.¹⁵ No. 14-cv-00846-LB, 2015 WL 628361, at *1
2 (N.D. Cal. Feb. 12, 2015); *see also Bangoura*, 2012 WL 5349991, at *1 (applying federal
3 privilege law based on the existence of a Title VII claim).

4 The plaintiff's allegations relate in part to the defendant's failure to accommodate the
5 plaintiff's injuries.¹⁶ The plaintiff alleges that she was injured at work in July 2018 and referenced
6 back injuries including herniated discs, lumbosacral radiculopathy, and a sprained ankle.¹⁷ She
7 alleges that her working conditions exacerbated these injuries.¹⁸ The plaintiff's medical records
8 related to these physical injuries are plainly relevant to the plaintiff's claims and she must
9 authorize the defendant to obtain records related to these physical injuries directly from her
10 providers.

11 Regarding records concerning the plaintiff's mental condition, the defendant has not alleged
12 anything more than garden-variety emotional distress. The defendant asserts that the plaintiff put
13 her mental and physical condition at issue based on her response to an interrogatory, in which the
14 plaintiff states that she suffered from "major depressive disorder and anxiety with depression."¹⁹
15 This alone does not constitute an allegation of a specific psychiatric injury or disorder.
16 Furthermore, the plaintiff has not alleged a claim for negligent or intentional infliction of
17 emotional distress and the complaint's prayer for relief merely references damages for "emotional
18 distress, humiliation and mental anguish."²⁰ In sum, the plaintiff has not alleged anything more
19 than garden-variety emotional distress.

20 The cases the defendant relies on to pierce the psychotherapist-patient privilege are
21 meaningfully different from the facts here.²¹ In *Evans v. Baxter Healthcare Corp.*, the plaintiff's
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23 ¹⁵ Notice of Removal – ECF No. 1 (*Smith v. Equinox Holdings, Inc.*, No. 14-cv-00846-LB).

24 ¹⁶ First Am. Compl. – ECF No. 37 at 8–9 (¶¶ 57–69).

25 ¹⁷ *Id.* at 6, 17, 19, 22 (¶¶ 41, 143, 159, 179).

26 ¹⁸ *Id.* at 5 (¶ 31).

27 ¹⁹ Disc. Letter – ECF No. 79 at 2.

28 ²⁰ First Am. Compl. – ECF No. 37 at 32.

²¹ Disc. Ltr. – ECF No. 79 at 3, 4 n.2.

complaint included allegations of “severe emotional distress.” No. CV 12-04919-WHO (KAW), 2013 WL 3786313, at *3 (N.D. Cal. July 17, 2013). Similarly, in *Bangoura*, the plaintiff specifically sought \$600,000 for emotional distress injuries. 2012 WL 5349991, at *2. Furthermore, a plaintiff may avoid disclosing mental health records by agreeing not to introduce expert testimony on emotional distress damages. *Verma v. Am. Express*, No. C 08-2702 SI, 2009 WL 1468720, at *2 (N.D. Cal. May 26, 2009).

Therefore, assuming the plaintiff does not intend to rely on psychotherapist-patient communications to prove her alleged damages or submit expert testimony in support of the claim for emotional distress, the defendant is not entitled to her mental health records. Nevertheless, the defendant is free to (1) question the plaintiff concerning “other stressors” that may have contributed to any emotional distress, (2) discover “the dates of other psychotherapy prior to the incidents alleged in the complaint,” and (3) “examine percipient witnesses or submit other evidence to show that the claim is exaggerated or false.” *EEOC*, 301 F.R.D. at 486.

CONCLUSION

The plaintiff must execute authorizations for the release of her medical records related to the physical conditions referenced in the complaint (back and ankle problems).

The plaintiff need not authorize the release of her psychiatric record records or submit to a psychiatric examination under Rule 35 unless she intends to rely on psychotherapist-patient communications to prove her alleged damages or submit expert testimony in support of the claim for emotional distress.

As to the defendant’s request for an extension of the discovery deadlines, any request to extend the discovery deadlines must be addressed to the trial court.

IT IS SO ORDERED.

Dated: August 11, 2022



LAUREL BEELER
United States Magistrate Judge